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REMARKS

The following remarks are structured in direct response to the examiner's comments contained in the office action of 10/28/2005.

The applicant would like to emphasize that the claims, as amended, do not introduce additional matter requiring additional consideration or search requirements. Amendments have been made with respect to clarity, proper claims formatting, and other issues raised by the examiner. The applicant would greatly appreciate if the examiner can issue an advisory letter as quickly as possible for this case.

Claims 4-6, 8-11, 13-16 and 18-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Phelps-McMillon. Phelps-McMillon discloses a device comprising: an elastomeric component, and engagement, said elastomeric component being exchangeable, said elastomeric being length adjustable and detachable.

The applicant has been advised from different sources that the "wherein" clauses included in independent Claims 4 and 13 (and to a further extent in Claim 22) do indeed constitute structural subject matter that defines the extensible properties of the elastomeric components in the invention. I claim, "wherein the at least one suspended elastomeric component provides an elastic resistance to create an upward force during performance of a chin/pull-up to offset a portion of an exerciser's body weight and thereby assist the exerciser in performing the chin/pull-up." The characteristic described in this clause is not a characteristic covered or present in Phelps.

Extensibility is not suggested in Phelps at all. In actual fact she describes, "The strap 30 comprises a resiliently flexible material..." (See Phelps col. 4, lines 11 and 12) Resiliently flexible does not necessarily mean extensible. Phelps' "resiliently flexible" strap is not designed with the same extensible properties as mine. In fact, Phelps helps makes no reference to extensibility, and only makes a statement to the contrary when she states "For added support the strap 30 may comprise a non-elastomeric material such as rope or nylon." (See Phelps col. 4, lines 12-14) Clearly, there is a sharp distinction here. Phelps further states, "The user then begins the treadmill and shifts their weight to the support belt device." (See Phelps col. 4, lines 60-63) If the Phelps strap had the extensible elastomeric properties of my device then the user would likely find themselves on the floor behind the treadmill upon shifting their weight to the device – thereby defeating the purpose of the Phelps "support strap".

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An additional point the applicant would like to make is with reference to the examiner's rejection of independent claim 13 as being anticipated by Phelps-McMillon. My claim 13 clearly includes "an overhead chin-up support structure" which is not anticipated, rendered obvious, suggested, or even implied by Phelps-McMillon. (Please see additional comments below concerning chinning bars.) Furthermore, the applicant sees no reason why the examiner believes it would be obvious for someone to make the connective progression from the Phelps support strap on the treadmill to that of a chin-up assistant. The applicant asserts the following points of reasoning for this statement:

- 1) The bars on most treadmills, while very secure on most quality machines, are not designed (nor are they intended) to support the bodyweight of the exerciser. In many cases these bars contain sensitive sensors and/or advanced electronics for measuring heart rate, displaying time lapse of exercising, and controlling the speed of the tread among other advanced functions – all of which could be damaged if full body weight were applied (please see figures 1 and 2 below).

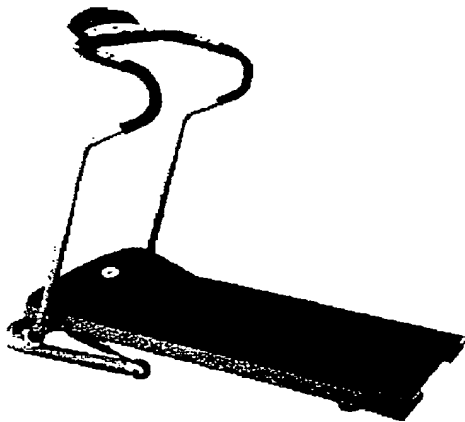


Fig. 1

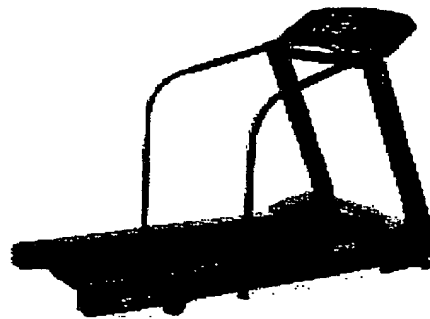


Fig.2

- 2) The bars on treadmills are not designed to vertically extend to an overhead position as is the requirement for standard chinning equipment. In fact, these bars are usually fixed at waist or abdominal level without the means for adjusting their height at all (please see figure 3 below).

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Fig. 3

While the applicant respects the fact that the structure of the claims should not be dependent upon the size of an individual, the applicant finds the examiner's argument somewhat brutally unfair that the bar on a treadmill would present the equivalent of standard overhead chin-up equipment for a person 2.5 feet tall (from the phone conversation and written reference to the fact that the chin-up equipment in Claim 12 was not adequately specified). Even if this were the case, the Phelps strap would not function in the manner I describe in my application for a number of reasons (see items 4 and 6 below).

- 3) The Phelps support strap is designed as a safety/utility strap so a person does not fall off the treadmill when not holding onto the rail, it is not designed to provide a vertical lifting bias and thereby offset a portion of the user's bodyweight during the course of the exercise.
- 4) Phelps' strap is claimed to be resiliently flexible – not necessarily extensible. Phelps-McMillon states that rubber can be used, but rubber is not necessarily practically extensible, i.e. fan belts. In fact, Phelps states that the support strap can be made with rope or nylon and still function in the method described. Extensibility is the essence of my invention and rope or nylon would not work at all for my device and therefore the "obvious" connection between these two very characteristically different devices and applications is neither obvious to me nor was it obvious to various patent consultants with whom I communicated.
- 5) The Phelps support strap is designed so that the user does not have to hold onto the bar. The applicant point would like to emphasize that his application concerns a device whereby the user is required to hold onto the bar.
- 6) The Phelps support strap is designed for use in a substantially horizontal position. If the user was not using the device in the manner intended then it appears that the device would be resting on the tread – this condition does not lend itself well for vertical deployment as my device is intended.
- 7) The Phelps strap engages the user around the back of the waist. My device engages the front of the lower leg.

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This combination of vast structural and usage differences indicates to me that the Phelps invention neither anticipates, renders obvious, suggests, or even implies either alone, or in combination with any other device, the description of my device as currently amended.

In regard to claim 9 and 19 Phelps-McMillon element 32 has springy elastic properties wherein the bracket is normally biased open before a user adjust it closed.

Phelps support strap adjustability comes from doubling back and securing the strap components to each other with snaps securely attached to the strap itself (see Phelps col. 4, lines 23-25). If the Phelps support strap was designed to have substantial extensibility these attachment points would easily introduce points of failure in the strap. Clearly substantial extensibility is not intended.

In regard to claim 10 note that element 12 is covered with a cotton covering (24).

Applicant believes he has satisfied this objection.

In regard to claim 11, element 12 may be manufactured of foam.

Applicant believes he has satisfied this objection.

In regard to claim 12 the applicant has failed to claim any specifics of chin-up equipment. Therefore this limitation is met by the equipment shown in Phelps-McMillon fig. 1.

The chin-up is a very well known exercise that is performed on equipment readily identifiable and understood by most people familiar with the exercise. Standard equipment consists of a securely fixed (and sometimes readily removable) overhead bar (or bars) of varying shape and mounting design. Regardless of the individual design the equipment possesses, there are two elements that are common to any apparatus classified as chinning equipment:

- 1) The bar is overhead because the user initiates the exercise while hanging their full body weight beneath the bar at arm's length;
- 2) The space directly beneath the bar is unobstructed by fixed, rigid objects (as illustrated in Phelps fig. 1) so that the exerciser can adequately perform the exercise; and
- 3) The bar is strong and secure enough to accommodate the full weight of the user so the exerciser can exercise in relative safety.

The exercise equipment can be doorway mounted, wall mounted, supported on vertical supports (e.g. free-standing or ground supported) or integrated into multi-station exercise machines and/or

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structures. However, neither I nor any of my friends or colleagues in the fitness industry, have ever seen chin-up exercise equipment integrated with or even structurally associated with a treadmill.

I have modified the claims specifying chin-up equipment combination (Claims 12 and 13) to more fully describe chin-up equipment in the manner the information is supplied in the specification. The claims now describe chin-up exercise equipment including a standard overhead chin-up bar or other appropriate overhead chinning apparatus enabling an exerciser to execute standard full body weight chin-ups.

In regard to claim 14, the treadmill is consider as a multi-function unit.

The applicant agrees that a treadmill can be considered a multi-function unit from the standpoint that the user can walk, jog, run or crawl on it. However, the applicant must point out that all these functions are carried out on the single moving tread of the device and therefore treadmills are considered single-station pieces of exercise equipment. The applicant has never seen a treadmill integrated with other exercise stations. The applicant has therefore changed the wording of the claim to remain consistent with the specification to that of "multi-station" exercise equipment (please see paragraph 007).

Claims 22 and 23 would be allowable if rewritten in proper claim format specifically line 1-3, of the claim wherein applicant is attempting to designate the first and second ends of the extensible component.

Please see specified amended claims. The applicant has attempted to rewrite these claims in proper claim format.

Claims 7 and 17 are objected to because it is not clear to the examiner as to what the "longitudinally hollow device" is and what an "enwrapping device" is in the instant invention, please point out in the specification, and drawings where the components are, so as to allow the examiner to examine these limitations.

Claim 7 and 17 seem to lack antecedent basis in the specification and clearly lack antecedent basis in the claims.

The applicant wishes to direct the examiner to the specification (please see paragraph 039, and fig. 5 item 32) where the basis is supported. Applicant has modified the wording in the claims to be more consistent with the wording of the specification, "The chin/pull-up assistant of Claim 4

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wherein a device having two ends is fitted around the elastomeric component on each side of the frontal lower leg engagement sling, wherein the device has a longitudinally extending aperture through which the elastomeric component is directed and whereby the elastomeric component can stretch beyond the two ends of the device.”

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Note the overall device of Kiser fig. 3.

The applicant wishes the examiner to recall statements made with respect to Kiser in the amendment filed July 13, 2005.

The applicant additionally wishes to point out that the present invention differs from the Kiser invention on four major points of distinction with respect to physical structure and usage that result in a new chin assist which is not anticipated, rendered obvious, suggested, or even implied by the Kiser device:

1) The Kiser invention includes a safety strap (fig. 1, item 1) designed to hold the foot holder stable at the top of the exercise range of motion via a third point of attachment for the device (please see Kiser abstract). This added measure of stability enables easier engagement and disengagement with the device and it works to help keep the child upright. However, this stability also restricts the exerciser's movement at the top of the exercise. The present invention provides no such restriction in its movement abilities as it is freely suspended from only two points thereby enabling the user to freely swing in free space allowing for a more natural exercise experience while still encouraging proper exercise form.

2) The Kiser invention is designed and intended for foot engagement only. Kiser makes no mention of using the device for the frontal lower leg and it should be obvious why he doesn't – the device is designed and intended for use with “children, especially obese children” who find performing the exercise difficult. Therefore, the prescribed use of the device dictates “The user stands on a chair or other platform and places one foot into the ‘shoe’. Preferably, this shoe is sufficiently large to comfortably hold the user's entire foot. While stepping into the shoe the user grasps the pull up bar and locks his or her free leg around the front of the shoe.” This procedure is based on safety as the child does not have to awkwardly, and potentially hazardously, balance on one foot while engaging the device. The “chair or other platform” places the child's feet at substantially the same level as the “shoe” and the ability to grab the pull up bar at the same time provides the security of stability to enable the child to stay upright. This security of stability is not offered with a frontal

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lower leg engagement system as the child would have to secure the device to a raised leg while standing on the ground with one foot. Using the "chair or other platform" described in Kiser's patent for a frontal lower leg engagement system would not work as the feet extended out behind the user would interfere with the "chair or other platform" and therefore obstruct the performance of the exercise. Therefore the applicant contends that the Kiser device was never intended nor does it suggest or anticipate the use of the frontal lower leg for engagement.

3) The Kiser invention makes no disclosure or manner of adjusting the length of the device to adapt to different sized individuals. Even if the user were to adjust the length of the safety strap (see Kiser fig.1) to adjust the length of the overall device, the device would, in this case, have an initial tension bias and therefore each different length of the device would provide different lift assist characteristics. The device of the present invention has no such limitations on length adjustability as each variable length is freely suspended thereby offering the same starting point lift characteristics.

4) The Kiser invention uses a rigid foothold and a manner for keeping the foot on the foothold, whereas the present invention utilizes an adaptive non-rigid sling to enwrap the frontal portion of the lower leg. A foothold does not provide for much adjustability in its engagement position as the foot needs to be properly secured and/or balanced on the device. My adaptive non-rigid sling is adjustable in its engagement position up and down the frontal portion of the user's lower leg. This adjustability allows the user to position the device safely, comfortably and securely at different points to correctly balance the upward force and ensure proper form. This ability is not possible with Kiser's device.

In view of the foregoing, the Applicant now believes that the present application is now in condition for allowance. An early and favorable advisory action is respectfully solicited.

Respectfully submitted,

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